UNIFORM CONSTRUCTION OF THE UNIFORM ACTS. — With the widespread adoption of the growing number of Uniform Acts, recommended by the Commissioners on Uniform State Laws, the question of what principles should be applied by the courts in their construction is becoming increasingly important. In a recent case before the Supreme Court it was urged that the Uniform Warehouse Receipts Act was but a step in the development of the state law, and that prior decisions of the state court were safe guides to its construction; but the court rejected that view, and so interpreted the act as to accomplish as far as possible its fundamental purpose to bring the law of the state into harmony with the commercial law of the whole country. *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank & Trust Co.*, Sup. Ct. Off., No. 117.[1]

The Conference of Commissioners on Uniform State Laws held its first meeting in 1892.[2] Since that time it has approved and recommended for adoption by the states fifteen Uniform Acts.[3] The purpose of the Conference is to secure uniformity of law on matters which from their nature are largely interstate, by voluntary action on the part of all the states, since this end is unattainable through the federal government because of constitutional limitations.[4] But obviously, if the courts place diverse constructions on the statutes so as to perpetuate former local doctrines, this attempt to bring order out of chaos will fail of success.[5] Uniformity of the "judge-made law" is as essential as uniformity of the statute law. In many cases the courts have recognized the purpose of the Uniform Acts, and have construed them liberally, examining decisions from other courts under the same sections of the acts in order to secure uniformity, even though this may have necessitated a change from the old rule in their own state.[6] But a number of courts have ig-

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[1] For a more complete statement of this case, see RECENT CASES, p. 561.

[2] See PROCEEDINGS OF THE TWENTY-FIFTH CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, Aug. 1915, p. 1.

[3] *Ibid.*, p. 139.

[4] See 36 AM. BAR ASS'N REP. 897, 898.

[5] Mr. Justice Hughes forcibly expressed this danger in the principal case, p. 6: "It is apparent that if these Uniform Acts are construed in the several states adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. . . . [The Uniform Act] should not be regarded merely as an offshoot of local law."

[6] Under the Uniform Bills of Lading Act. Roland M. Baker Co. *v.* Brown, 214 Mass. 196, 100 N. E. 1025.

Under the Uniform Sales Act. Pope *v.* Ferguson, 82 N. J. L. 566, 83 Atl. 353.

Under the Uniform Warehouse Receipts Act. Kershaw *v.* Booth Fisheries Co., 177 Ill. App. 117.

Under the Negotiable Instruments Law. Wirt *v.* Stubblefield, 17 App. D. C. 283; Vander Ploeg *v.* Van Zuuk, 135 Ia. 350, 112 N. W. 807; Mechanics' & Farmers' Savings Bank *v.* Katterjohn, 137 Ky. 427, 125 S. W. 1071; Vanderford *v.* Farmers' & Mechanics' National Bank of Westminster, 105 Md. 164, 66 Atl. 47; Union Trust Co. *v.* McGinty, 212 Mass. 205, 98 N. E. 679; Walker *v.* Dunham, 135 Mo. App. 396, 115 S. W. 1086; Rockfield *v.* First National Bank of Springfield, 77 Oh. St. 311, 83 N. E. 392; Felt *v.* Bush, 41 Utah 462, 126 Pac. 688; Trustees of American Bank of Orange *v.* McComb, 105 Va. 473, 54 S. E. 14; Columbian Banking Co. *v.* Bowen, 134 Wis. 218, 114 N. W. 451; First National Bank of Shawano *v.* Miller, 139 Wis. 126, 120 N. W. 820, and cases cited in n. 18.

nored the ideal [7] and have placed a strict construction on the acts, in favor of the law as declared in their own decisions before the adoption of the statutes, often without any examination of the decisions in other states.[8]

As the Negotiable Instruments Law is the oldest and the most widely adopted of the Uniform Acts,[9] it has been interpreted the most frequently; but the way the courts deal with it typifies their attitude toward the others. The Louisiana court, overlooking the Negotiable Instruments Law and following the former rule of the state, held that an anomalous indorser was presumed to be, not an indorser, but a surety.[10] The Nebraska court decided that a check was still an assignment under the law,[11] clinging to its former doctrine and citing no cases from other jurisdictions, though Virginia had previously reached the opposite conclusion.[12] Other courts have failed to refer to the law at all in cases to which it applied.[13] The New York courts have been among the worst offenders, frequently ignoring the law entirely, and very rarely citing any decisions except their own former ones.[14] They have been very reluctant to admit that any former rules are changed by the law.[15]

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[7] These courts disregard the express provision for uniform construction contained in the commercial acts. The Uniform Warehouse Receipts Act, § 57: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." A similar provision is contained in the Uniform Sales Act (§ 74) and in the Uniform Bills of Lading Act. The Negotiable Instruments Law is entitled: "A General Act Relating to Negotiable Instruments (being an Act to Establish a Law Uniform with the Laws of Other States on that Subject)." See WILLISTON, SALES, § 617; BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 2 ed., 1. See 39 AM. BAR ASS'N REP. 1068; 2 AM. BAR ASS'N JOURNAL, No. 1, pp. 60–78.

[8] Holliday State Bank *v.* Hoffman, 85 Kan. 71, 116 Pac. 239; First National Bank of Lisbon *v.* Bank of Wyndmere, 15 N. D. 299, 108 N. W. 546. See also cases cited in notes 11, 14, 19. See 34 AM. BAR ASS'N REP. 1030; 39 *Id.*, 1065, 1067.

[9] The Negotiable Instruments Law was approved by the Commissioners on Uniform Laws in 1896, and had been adopted in forty-seven jurisdictions in August, 1915. See PROCEEDINGS OF THE TWENTY-FIFTH CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, pp. 139, 141; 39 AM. BAR ASS'N Rep. 1085.

[10] John M. Parker & Co. *v.* Guillot, 118 La. 223, 42 So. 782; Hackley State Bank *v.* Magee, 128 La. 1008, 55 So. 656. The Negotiable Instruments Law, §§ 63, 64, governs this point. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 2 ed., 75, 76.

[11] Farrington *v.* F. E. Fleming Commission Co., 94 Neb. 108, 142 N. W. 297. This case is criticised in 27 HARV. L. REV. 177. The result is directly opposed to the express words of the Negotiable Instruments Law, § 189. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 2 ed., 155.

[12] Baltimore & Ohio R. Co. *v.* First National Bank of Alexandria, 102 Va. 753, 47 S. E. 837.

[13] First National Bank of Lisbon *v.* Bank of Wyndmere, 15 N. D. 299, 108 N. W. 546; Tamlyn *v.* Peterson, 15 N. D. 488, 107 N. W. 1081; Walters *v.* Rock, 18 N. D. 45, 115 N. W. 511; Polhemus *v.* Prudential Realty Corporation, 74 N. J. L. 570, 67 Atl. 303; Heavey *v.* Commercial National Bank of Ogden City, 27 Utah 222, 75 Pac. 727; Yakima Valley Bank *v.* McAllister, 37 Wash. 566, 79 Pac. 1119.

[14] Birmingham Trust & Savings Co. *v.* Whitney, 95 N. Y. App. Div. 280, 88 N. Y. Supp. 578; Oriental Bank *v.* Gallo, 112 N. Y. App. Div. 360, 98 N. Y. Supp. 561; Haddock, Blanchard & Co. *v.* Haddock, 118 N. Y. App. Div. 412, 103 N. Y. Supp. 584; Williamsburgh Trust Co. *v.* Tum Suden, 120 N. Y. App. Div. 518, 105 N. Y. Supp. 335; Hyman *v.* Doyle, 53 N. Y. Misc. 597, 103 N. Y. Supp. 778; Citizens' Savings Bank *v.* Couse, 68 N. Y. Misc. 153, 124 N. Y. Supp. 79.

[15] "We may take judicial notice that the commission appointed to revise and codify the statutes was created, in the main, to codify existing laws, and not make new rules; and certainly it was never intended that settled usages in respect of commer-

As an illustration, the New York doctrine that one receiving a note as collateral security for a preëxisting debt was not a holder for value,[16] was declared by the first case after the adoption of the law to be changed,[17] the result which was reached by courts of other states which had previously held the New York view;[18] but later New York cases, not citing decisions from any other jurisdiction, held the former rule not altered by the law.[19] The point has not yet been directly decided by the Court of Appeals, so that the final result in New York is still uncertain.[20]

The Commissioners on Uniform Laws recognized the menace to uniformity in the growing divergence in judicial interpretation,[21] and in 1913 they appointed a Committee on Uniformity of Judicial Decisions to combat this tendency.[22] This committee has not only brought the need of a uniform construction to the attention of every court of last resort in the United States, but is also tabulating all the decisions rendered under the commercial acts, and on request furnishes references of all the cases under any section of any act to the courts.[23] The principal case, throwing the influence of the Supreme Court vigorously on the side of uniform construction, is an encouraging sign. It is to be hoped that all the courts will come to recognize the purpose of the acts to secure uniformity, and after freely examining decisions from other

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cial paper, founded upon decisions covering a period of eighty years and uniform in application, should be overthrown in the construction of ambiguous and obscure expressions used by such a body." Sutherland *v.* Mead, 80 N. Y. App. Div. 103, 109, 80 N. Y. Supp. 504, 509.

[16] Coddington *v.* Bay, 20 Johns. 637, is the leading case for the old New York rule.

[17] Brewster *v.* Shrader, 26 N. Y. Misc. 480, 57 N. Y. Supp. 606. The Negotiable Instruments Law, §§ 25, 27, governs this point. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 2 ed., 32 *ff.* It seems clear that the law was intended to change the old New York rule on this point and bring it into uniformity with the prevailing doctrine.

[18] Graham *v.* Smith, 155 Mich. 65, 118 N. W. 726; State Bank of Freeport *v.* Cape Girardeau & C. R. Co., 172 Mo. App. 662, 155 S. W. 1111. See Brooks *v.* Sullivan, 129 N. C. 190, 39 S. E. 822. In Payne *v.* Zell, 98 Va. 294, 36 S. E. 379, the court said that whatever the rule had been at common law, the Negotiable Instruments Law had settled it in accord with the above cases.

[19] Sutherland *v.* Mead, 80 N. Y. App. Div. 103, 80 N. Y. Supp. 504; Roseman *v.* Mahony, 86 N. Y. App. Div. 377, 83 N. Y. Supp. 749; Hover *v.* Magley, 48 N. Y. Misc. 430, 96 N. Y. Supp. 925. *Cf. In re* Hopper-Morgan Co., 154 Fed. 249. See criticism of above cases in 27 AM. BAR ASS'N REP. 658; 34 *Id.*, 1034 *ff.*

[20] In later New York cases there are *dicta* to the effect that the Negotiable Instruments Law has changed the former New York rule. See King *v.* Bowling Green Trust Co., 145 N. Y. App. Div. 398, 402, 129 N. Y. Supp. 977, 980; Broderick & Bascom Rope Co. *v.* McGrath, 81 N. Y. Misc. 199, 201, 142 N. Y. Supp. 497, 498. And it is fair to say that the more recent New York decisions show a more liberal disposition toward the Uniform Acts. Van Vliet *v.* Kanter, 139 N. Y. App. Div. 603, 124 N. Y. Supp. 63; King *v.* Bowling Green Trust Co., 145 N. Y. App. Div. 398, 129 N. Y. Supp. 977; Casper *v.* Kuhne, 79 N. Y. Misc. 411, 140 N. Y. Supp. 86. "The desirability of uniformity in the laws of various states with reference to negotiable instruments is so obvious, and the legislative intent to harmonize our theretofore conflicting decisions with those of other jurisdictions is, to my mind, so clearly expressed, that full effect should be given thereto." Broderick & Bascom Rope Co. *v.* McGrath, 81 N. Y. Misc. 199, 201, 142 N. Y. Supp. 497, 498.

[21] See 34 AM. BAR ASS'N REP. 1051 *ff.*; 38 *Id.*, 1009 *ff.*; 39 *Id.*, 1065.

[22] See 38 AM. BAR ASS'N REP. 980.

[23] See PROCEEDINGS OF THE TWENTY-FIFTH CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, p. 202; 39 AM. BAR ASS'N REP. 1067, 1068.

states will construe the acts liberally so as to bring their own decisions into accord. Not till then will there be actual uniformity of law.

IS A MAN'S ILLEGAL PLACE OF BUSINESS HIS CASTLE? — Although under the early law a plea of self-defense to a charge of homicide could not be availed of, and the jury were allowed to convict, leaving the prisoner to the mercy of the king, it gradually came to pass that the plea was accepted as a valid legal defense.[1] As the killing is not in self-defense, unless it reasonably appears to the assailed that there is no other way of saving his life[2] the assailed must "retreat to the wall" before any right of self-defense can arise. Such is the law in many jurisdictions to-day.[3]

But from the earliest times there has been something sacred about the dwelling house. "A man's house is his castle" is not an overstatement of the rights of the householder.[4] His house is more than his castle; it is his "wall" from which he has no duty to retreat when attacked.[5] Although there are conflicting statements in the books, the doctrine that a man when assailed in his own house, rather than flee, may kill to save his life, is probably not based on the theory that the homicide is justifiable as preventing an attack on property, but that it is excusable because committed in self-defense.[6] What the householder is protecting is

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[1] In a case in Y. B. 4 HEN. VII, 2, the bar claimed that a pardon was unnecessary, but the justices were of a contrary opinion. In Y. B. 26 HEN. VIII, 5, the prisoner was released without a pardon. See Professor Beale's article, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567–573; also 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, 476–483.

[2] See charges to jury, Regina *v.* Symondson, 60 J. P. 645; Regina *v.* Smith, 8 C. & P. 160.

[3] Allen *v.* United States, 164 U. S. 492, 497; State *v.* Donelly, 69 Ia. 705, 27 N. W. 369; State *v.* Rheams, 34 Minn. 18, 24 N. W. 302. See Keith *v.* State, 97 Ala. 32, 11 So. 914. See also 4 BL. COM. 185, "The party assaulted must therefore flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him."

[4] See 1 HALE P. C. 487, "For his house is his castle of defense." Meade's and Belt's case, 1 Lewin C. C. 184, 185, Holroyd, J. (charging jury), "for a man's house is his castle, and therefore in the eye of the law it is equivalent to an assault."

[5] Alberty *v.* United States, 162 U. S. 499, 505; People *v.* Tomlins, 213 N. Y. 240, 107 N. E. 496; Brinkley *v.* State, 89 Ala. 34, 8 So. 22; State *v.* Patterson, 45 Vt. 308, 318; Elder *v.* State, 69 Ark. 648, 657, 65 S. W. 938, 941; People *v.* Newcomer, 118 Cal. 263, 272, 50 Pac. 405, 409; People *v.* Lewis, 117 Cal. 186, 193, 48 Pac. 1088, 1090; State *v.* Middleham, 62 Ia. 150, 154, 17 N. W. 446, 447; Estep *v.* Commonwealth, 86 Ky. 39, 4 S. W. 820; Wright *v.* Commonwealth, 85 Ky. 123, 132, 2 S. W. 904, 908; State *v.* O'Brien, 18 Mont. 1, 11, 43 Pac. 1091, 1093. See Regina *v.* Symondson, 60 J. P. 645. See also Prof. Beale, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567, 579; Prof. Beale, "Homicide in Self-defense," 3 COL. L. REV. 526, 540. The doctrine that a man's house is his castle has been extended in a few jurisdictions in the United States to cover not only the house itself, but also the surrounding premises. Beard *v.* United States, 158 U. S. 550, 559; Baker *v.* Commonwealth, 93 Ky. 302, 19 S. W. 975; Naugher *v.* State, 105 Ala. 26, 17 So. 24. See Rex *v.* Scully, 1 C. & P. 319. But see Thomas *v.* State, 69 So. 315 (Ala.)

[6] Bracton speaks as if homicide in warding off a murderous attack in the dwelling house was justifiable rather than excusable. "*Item erit si quis Hamsokne quae dicitur invasio domus, contra pacem domini regis in domo sua se defenderit, et invasor occisus fuerit, impersecutus et inultus remanebit, si ille quem invasit aliter se defendere non potuit, dicitur enim quod non est dignus habere pacem qui non vult observare eam.*" BRACTON, F 144 *b*. This seems to imply that reasons other than self-defense are be-